

# State of California



## Fair Political Practices Commission

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August 15, 1985

Carl O. Waggoner, City Attorney  
City of Turlock  
P.O. Drawer T  
Turlock, CA 95351-1526

Re: Your Request for Advice  
Our Advice No. A-85-146

Dear Mr. Waggoner:

Thank you for your letter requesting advice on behalf of Mr. Ronald Hillberg, a member of the Planning Commission for the City of Turlock, regarding his duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

### FACTS

The following facts are based on information provided in your letter, conversations with Mr. Hillberg, and the draft of the North Turlock Specific Plan.

Mr. Hillberg is an attorney who is a member of the Planning Commission for the City of Turlock. The Planning Commission is currently considering the adoption of the North Turlock Specific Plan. The North Turlock Specific Plan includes approximately 1,890 acres located in and outside of the corporate limits of the City of Turlock. Much of this area is undeveloped. The purpose of the plan is to guide the orderly development of the general area north of the City of Turlock, which includes California State University, Stanislaus.

Currently, the land in the North Turlock Specific Plan area is zoned R-1 residential, which allows single-family residential use (mid-density residential, as that term is used in the North

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

Turlock Specific Plan<sup>2/</sup>). California State University, Stanislaus, is located in the area, and the Specific Plan would, among other things, provide that the lands adjacent to the University be zoned for multi-family (upper-density) residential use.

Mr. Hillberg has the following financial interests:

A. Law Firm (Investment and Income)

Mr. Hillberg is the sole shareholder of his law practice, Ronald W. Hillberg, Professional Corporation. He currently represents, or has recently represented, the following clients who own property in the North Turlock Specific Plan area:

(1) Mr. Hillberg's first client is three individuals who are investors in a limited partnership. Mr. Hillberg represents the individuals jointly in an indemnity lawsuit. All three individuals maintain their personal residences in the North Turlock Specific Plan area. In addition, one of these individuals owns approximately 40 acres of undeveloped real property in the North Turlock Specific Plan area. The 40-acre parcel is currently used for farming, although it is zoned for single-family (mid-density) residential use. The North Turlock Specific Plan would permit the property to be used for multi-family (upper-density) residential purposes.

Mr. Hillberg has received less than \$250 in fees from this client, although he has stated that the fees could total at least \$250 if he continues to represent this client.

(2) The second client is a corporation which has paid Mr. Hillberg more than \$250 in the last 12 months. The sole shareholder of the corporation owns a undeveloped two-acre parcel in the Specific Plan area which is zoned for single-family (mid-density) residential use. The maps of the Specific Plan indicate that this parcel would be included in an area zoned for multi-family (upper-density)

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<sup>2/</sup> According to Mr. Hillberg, the zoning terms used in the North Turlock Specific Plan and Turlock's General Plan are different. He has informed us that the designation "R-1" in the General Plan corresponds to "single-family (mid-density) residential" in the Specific Plan.

residential use. However, Mr. Hillberg has informed us that the properties surrounding this parcel are developed with single family (mid-density) residences, and that it is likely that the zoning for this parcel will remain single-family (mid-density) residential.

(3) The third client is a corporation which has paid more than \$250 in fees in the last year. The president of the corporation is also the 51-percent shareholder. The president and his spouse own an undivided 1/6 interest in 40 acres of undeveloped land located in the Specific Plan area. Under the proposed plan, most of the 40-acre parcel would continue to be designated for single-family (mid-density) residential use. However, a strip of land in the northern part of the parcel would be in an area zoned for single-family (low-density) residential use, and a strip of land in the southern part of the parcel would be in an area zoned for multi-family (upper-density) residential use.

(4) Mr. Hillberg's fourth client is a corporation which has a leasehold interest in property in the Specific Plan area. The corporation has paid less than \$250 in legal fees to Mr. Hillberg in the last 12 months.

#### B. Other Investment and Real Property Interests

Mr. Hillberg owns a 1/3 interest in a partnership which owns a duplex in the Specific Plan area. Mr. Hillberg's personal residence is also located in the Specific Plan area. The current zoning of these properties and the adjacent area is single-family (mid-density) residential, and the Specific Plan would not change that designation.

#### C. Salary from California State University, Stanislaus

Mr. Hillberg is also an instructor at California State University, Stanislaus, and receives an annual salary of more than \$250.

#### QUESTION

Is Mr. Hillberg required to disqualify himself from participating in any decisions of the Planning Commission regarding the North Turlock Specific Plan?

#### CONCLUSION

Mr. Hillberg is not required to disqualify himself from participating in any decision regarding the North Turlock

Specific Plan unless the decision could have a material financial effect on one of Mr. Hillberg's clients or his other financial interests, as discussed in the following analysis.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a)-(e).

We shall now apply these general provisions to Mr. Hillberg's specific financial interests.

A. Law Firm (Investment and Income)

All income to Mr. Hillberg's law firm is considered income to Mr. Hillberg, since he is the sole owner of the law firm. Section 82030. Accordingly, if Mr. Hillberg has received \$250 or more from any client, he must, during the 12-month period following receipt of the income, disqualify himself from participating in decisions which could have a material financial effect on that client, distinguishable from the effect on the public generally.

(1) Mr. Hillberg has informed us that he has received less than \$250 in fees from the first client, the three individuals whom he jointly represents in an indemnity lawsuit. Regardless of the effect of the North Turlock Specific Plan on the property interests of the client, Mr. Hillberg is not required to disqualify himself unless the client has paid or promised to pay a total of \$250 or more in fees during a 12-month period to Mr. Hillberg.

If Mr. Hillberg receives at least \$250 from this client, the individuals become sources of income to him for purposes of Section 87103. Mr. Hillberg must then consider whether the North Turlock Specific Plan would have a reasonably foreseeable material financial effect on any of those individuals.

All three individuals maintain their personal residence in the Specific Plan area. According to the copy of the proposed North Turlock Specific Plan area provided to us, the zoning of these parcels would change from single-family (mid-density) residential to multi-family (upper-density) residential. This is a significant change in the permitted use, which may cause a material change in the fair market value of these parcels. In addition, the areas surrounding the parcels would also be zoned for multi-family (upper-density) residential use, which could significantly affect the use and enjoyment of the three parcels for single-family residential purposes. Accordingly, the proposed Specific Plan appears to make changes which could have a significant effect on the financial interests of Mr. Hillberg's client, and Mr. Hillberg would be required to disqualify himself from participating in those decisions if the client's fees reach a total of \$250 or more.

In addition, one of the individuals owns 40 acres of undeveloped land which is currently zoned single family (mid-density) residential. Under the Specific Plan, the

40-acre parcel would be designated for multi-family (upper-density) residential use. We think that this is a significant change in the permitted use which is likely to have a material effect on the fair market value of the 40-acre parcel, and therefore a material financial effect on Mr. Hillberg's client. Accordingly, Mr. Hillberg would be required to disqualify himself from participating in any decisions concerning the North Turlock Specific Plan which would affect the 40-acre parcel in question. However, we emphasize that disqualification is not required unless Mr. Hillberg receives or has been promised at least \$250 in fees from this client during the 12 months preceding the decision.

(2) Mr. Hillberg's second client, a corporation, is a source of income of \$250 or more to Mr. Hillberg. One shareholder owns the entire corporation. In this situation, the sole shareholder is really Mr. Hillberg's client (see enclosed copy of advice letter to Daniel S. Hentschke, File No. A-80-069, March 5, 1980). Accordingly, Mr. Hillberg must refrain from participating in decisions which could have a material financial effect on the sole shareholder's financial interests, such as the shareholder's undeveloped two-acre parcel.

If, as Mr. Hillberg has advised us, the proposed North Turlock Specific Plan would not change the zoning of the two-acre parcel owned by his client, Mr. Hillberg may participate in that decision. However, Mr. Hillberg would be required to disqualify himself from participating in a decision which would significantly change the permitted use of his client's undeveloped property, such as a decision to increase the permitted density from single-family residential use to multi-family residential use.

(3) As discussed above with regard to Mr. Hillberg's second client, when a public official receives income from a closely-held corporation, the controlling shareholder of the corporation may be considered the actual client and source of income to the official. In this case, the controlling (51-percent) shareholder of the corporation Mr. Hillberg represents is also the president of the corporation and the individual who makes the business decisions for that corporation. Once again, Mr. Hillberg's actual client is the controlling shareholder. Accordingly, based on the Hentschke letter, supra, we conclude that the controlling shareholder of the corporation is a source of income to Mr. Hillberg. Mr. Hillberg must, therefore,

refrain from participating in decisions which would materially affect the financial interests of the controlling shareholder.

In this instance, Mr. Hillberg's client's financial interests include an undivided 1/6 interest in 40 acres of undeveloped land located in the Specific Plan area. Based on the fact that most of this property would continue to be designated for single-family (mid-density) residential use under the North Turlock Specific Plan, we think it is unlikely that the proposed Specific Plan will have a material financial effect on the client's interest in the 40-acre parcel. However, if specific facts do indicate that the change in the zoning of any portion of the 40-acre parcel is likely to substantially increase the fair market value of the client's 1/6 interest in that parcel, then Mr. Hillberg would be required to disqualify himself from decisions concerning the North Turlock Specific Plan which would affect that 40-acre parcel.

(4) Mr. Hillberg has received less than \$250 during the last 12 months from his fourth client, a corporation; therefore, the corporation is not a source of income to Mr. Hillberg under Section 87103(c). Accordingly, it is not necessary to determine whether the decisions concerning the proposed North Turlock Specific Plan would have a material financial effect on this corporation.

#### B. Other Investment and Real Property Interests

The proposed North Turlock Specific Plan would not change the permitted use of the areas in which Mr. Hillberg has interests in real property. Therefore, the proposed Specific Plan would not have a foreseeable material financial effect on Mr. Hillberg's real property interests, and Mr. Hillberg may participate in decisions affecting the areas in which those property interests are located. Of course, if an amendment to the proposed Specific Plan were before the Planning Commission, and that amendment could significantly affect the value of Mr. Hillberg's real property interests, then Mr. Hillberg may be required to disqualify himself from participating in the decision on the amendment. You or Mr. Hillberg should contact us for additional advice in the event such a situation occurs.

#### C. Salary from California State University, Stanislaus

California State University, Stanislaus is a state agency, and salary from a state, local, or federal government agency is

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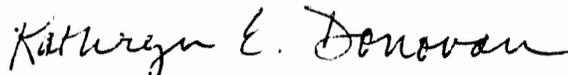
not considered "income" for purposes of the Political Reform Act. Section 82030(b)(2). Consequently, the University is not a source of income of \$250 or more to Mr. Hillberg pursuant to Section 87103(c), and Mr. Hillberg is not required to disqualify himself from participating in decisions on the Specific Plan which could affect the University.

Furthermore, Section 87103(d) does not require Mr. Hillberg to disqualify himself from any decisions as a result of his employment with the University. Section 87103(d) provides that a public official has a financial interest in any business entity which would be materially affected by a governmental decision if the official is an employee of that business entity. However, business entities are defined as organizations operated for profit (Section 82005); thus, government agencies are not considered "business entities" for purposes of the Political Reform Act. Accordingly, Mr. Hillberg's employment with the University does not require him to disqualify himself from participating in any decisions concerning the North Turlock Specific Plan.

Although we have concluded that Mr. Hillberg must disqualify himself from participating in certain decisions concerning the North Turlock Specific Plan, Mr. Hillberg need not disqualify himself from participating in all decisions concerning the Specific Plan. If the decisions before the Planning Commission can be structured so that the portions of the Specific Plan which would require Mr. Hillberg's disqualification are considered separately from the remainder of the Specific Plan, it would be possible for Mr. Hillberg to participate in decisions affecting most of the area included in the Specific Plan.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan  
Counsel  
Legal Division

KED:plh  
Enclosure

# CITY of TURLOCK

City Attorney  
Carl O. Waggoner

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Phone (209) 668-5615

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June 21, 1985

State of California  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, California 95804

Re: Request For Written Advice

Dear Members of the Commission:

I am writing to request written advice relative to several questions which have arisen regarding a potential conflict of interest by a City of Turlock Planning Commissioner. I have been requested by that individual to ask your written advice relative to whether he can participate in planning commission consideration of a subject known as the "North Turlock Specific Plan".

The individual who has requested the advice is Ronald W. Hillberg, Esquire, who is an attorney in the employ of Ronald W. Hillberg, Professional Corporation. Mr. Hillberg is the sole shareholder of the corporation and it is his primary source of income. Mr. Hillberg's questions relate to his representation of clients who may be affected by the North Turlock Specific Plan.

The North Turlock Specific Plan includes approximately 1890 acres in and outside of the corporate limits of the City of Turlock. Much of the area is undeveloped and the purpose of the plan is to cause the orderly development of the general area which includes California State University, Stanislaus.

Mr. Hillberg has asked the following questions regarding whether the following activities of his law corporation would constitute a conflict of interest:

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"1. To the best of my knowledge only three individual clients have direct property ownership interests in the specific plan area. At least one of these three owns substantial property within the area. I am presently representing all three jointly in a lawsuit. To date the corporation has billed them a total of \$153.00 for these services. It can be assumed that the representation of these persons will be ongoing, although the total amount of fees to be received is very speculative.

2. From October 1984 through April 1985, I represented a corporation, the sole owner of which also owns an undeveloped parcel of about two acres in the specific plan area. All services were performed on behalf of the corporation. Total fees exceeded \$1,000. This representation is no longer ongoing.

3. I represent three corporations in which an individual is respectively, a 51, 40, and 25 percent shareholder. In the last year more than \$250. but less than \$1,000. has been received from the first two corporations. No fees have been received from the third. The individual owns with his spouse an undivided one-sixth (1/6) interest in 40 acres within the plan area.

4. Another corporation I represent has a leasehold interest in property within the plan area. The principals of the corporation are the land owners. My corporation received \$81.00 in fees from that corporation last year."

Mr. Hillberg is also the owner of 1/3 of an interest in a partnership which owns a duplex in the developed portions of the planned area. His personal residence is in the plan area as well. Because of these property interests, Mr. Hillberg is concerned that he may have a conflict of interest.

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Lastly, Mr. Hillberg is an instructor at California State University, Stanislaus and is concerned that his relationship with the college may in some way be construed as a conflict.

In the event you need further information, please contact me.

Very truly yours,

CARL O. WAGGONER  
City Attorney

CW/dr  
cc Mr. Ronald W. Hillberg